

Private foundation taxable expenditures; tools for vocational school students. Grants by a private foundation to vocational high schools to be used to purchase the basic tools of a trade for students selected by representatives of the foundation are grants to individuals for study and will be taxable expenditures unless the requirements of section 4945(g) of the Code are met.

Advice has been requested whether, under the circumstances described below, grants made to individuals by a private foundation are subject to the provisions of section 4945(d)(3) of the Internal Revenue Code of 1954.

As one of its activities, the private foundation has established a program under which it makes grants to vocational high school students in a certain geographical area. The grants are used to supply selected students with the basic tools of their chosen trades to enable them better to learn their trades and to enter into those trades upon graduation.

Announcements of the availability of the grants are circulated to principals, counselors, teachers, and students. The students submit applications for grants with a list of the tools required and their itemized cost to a selection committee composed of representatives of the private foundation. Grantees are selected on the basis of ability and promise and on a clear showing of financial need. The criteria for selection make it clear that students must have demonstrated exceptional promise, either through scholastic achievement or by unusual talent in a particular field, and be motivated to complete their vocational training.

The vocational schools purchase the tools for the students chosen by the selection committee with grant funds paid by the private foundation. With some exceptions for outstanding juniors, tool awards are made primarily to high school seniors. The tools awarded are used during the grantee's senior year (or, where a junior is the grantee, during the junior and senior years) as the student completes the curriculum in a particular vocational area. Upon graduation, the tools become the property of the students. Should a student fail to graduate, the tools revert to the school for such use as the principal may determine.

The schools that participate in the program are all section 509(a)(1) organizations.

The private foundation maintains records relating to the identification and qualification of grantees, and the amount and purpose of each grant.

Section 4945 of the Code imposes a tax on each taxable expenditure made by a private foundation.

Section 4945(d)(3) of the Code provides that the term 'taxable expenditure' includes any amount paid or incurred by a private foundation as a grant to an individual for study or other similar purpose by that individual, unless the grant satisfies the requirements of section 4945(g).

Section 53.4945-4(a)(3)(i) of the Foundation Excise Tax Regulations provides that a grant to an individual for purposes other than those described in section 4945(d)(3) of the Code is not a taxable expenditure within the meaning of that section, even if the requirements of section 4945(g) are not met. However, as Rev. Rul. 76-460, 1976-2 C.B. 371, indicates, a grant to an individual for purposes other than those described in section 4945(d)(3) may constitute a taxable expenditure under section 4945(d)(5).

Section 53.4945-4(a)(4)(i) of the regulations provides that a grant by a private foundation to another organization, which the grantee organization uses to make payments to an individual for purposes described in section 4945(d)(3) of the Code, shall not be regarded as a grant by the private foundation to the individual grantee if the foundation does not earmark the use of the grant for any named individual and there does not exist an agreement, oral or written, whereby such grantor foundation may cause the selection of the individual grantee by the grantee organization.

Section 53.4945-4(a)(4)(ii) of the regulations provides that a grant by a private foundation to an organization described in section 509(a)(1), (2), or (3) of the Code, which the grantee organization uses to make payments to an individual for purposes described in section 4945(d)(3), shall not be regarded as a grant by the private foundation to the individual grantee (regardless of the application of section 53.4945-4(a)(4)(i)) if the grant is made for a project which is to be undertaken under the supervision of the section 509(a)(1), (2), or (3) organization and such grantee organization controls the selection of the individual grantee.

In the instant case, the private foundation makes grants to the vocational schools rather than to the individual students. However, the foundation through its representatives selects the individual grant recipients. Thus, under section 53.4945-4(a)(4)(ii) of the regulations, the grants are deemed to be made directly to the individual students.

The purpose of the grants is to aid needy and talented students to complete their vocational education. Thus, the grants in question are grants to individuals for study or similar purposes within the meaning of section 4945(d)(3) of the Code.

Accordingly, the grants are subject to the provisions of section 4945(d)(3) of the Code and will constitute taxable

expenditures unless the foundation's grant-making procedures satisfy the requirements of section 4945(g).